IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8108 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARESH JODHABHAI ZINZALA

Versus

STATE OF GUJARAT THRO' SECRETARY

Appearance:

1. Special Civil Application No. 8108 of 2004

MR DC SEJPAL for Petitioner No. 1

MR HD DAVE, Ld. AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 20/07/2004

ORAL JUDGEMENT

1. Rule. Mr.Dave, learned AGP waives service of rule on behalf of the State respondents. With the

consent of the parties, the matter is taken up for final hearing.

2. The short facts of the case are that petitioner was granted admission to P.T.C. for the year 2003-04 and one FIR came to be filed against the petitioner vide Criminal Register No.26/2004 of Talaja Police Station on the ground that he appeared as a dummy student in place of another student in Standard 12 examination. The petitioner thereafter continued to study in PTC and he had to fill up the form of examination in the month of June, 2004. At that time, he was not allowed to fill up the form on the ground of communication dated 11-6-2004 issued by the State Examinations Board to the Principal of the College. The petitioner, under these circumstances, has approached this Court.

3. I have heard Mr.Sejpal, learned Counsel for the petitioner and Mr.Dave, learned AGP for the State respondents.

4. Upon hearing the learned Counsel appearing for the parties it appears that there is no dispute on the point that the petitioner is facing criminal proceedings Criminal Register No.26/2004 on the alleged ground of appearing in the examination as dummy student and there is also no dispute on the point that the petitioner was granted admission in PTC and he has prosecuted the study. There is also no dispute on the point that up till now there is no order of conviction imposed by the competent Court and, therefore, the status of the petitioner is as that of a person facing criminal case. However, Mr.Sejpal, learned Counsel for the petitioner submitted that to the knowledge of the petitioner, up till now the charge-sheet is not filed. Be as it may, but it appears that as per the Department, the petitioner is found to have been involved in the offence of appearing in the examination as dummy student.

5. Even if all the aforesaid circumstances are considered, I find that as such there is no prohibition in allowing any person facing criminal trial or who is charged with criminal offence to undergo the study. Even those who are in jail and undergoing imprisonment are also allowed to prosecute the studies, may be as external students. Therefore, if such persons are allowed to prosecute studies, it may not result into affecting the trial in any manner or the criminal proceedings in any manner, nor it would affect as such the field in the education. On the contrary, if such persons are allowed to prosecute studies, it may be in the larger interest

for their improvement in future for all time which may be required in life.

6. The learned AGP has not been able to show any prohibition, disqualifying the student from appearing in the examination in case he is facing criminal case or trial.

7. In above view of the matter it appears that the order dated 11-6-2004 passed by the Gujarat State Examinations Board, copy whereof is produced on page 6 of the petition cannot be sustained in the eye of law and if there is no prohibition for allowing petitioner to prosecute studies and if petitioner is otherwise not disqualified to prosecute the studies of PTC, petitioner is required to be allowed to prosecute studies. It may be that at the time when the question arises for offering employment to petitioner, on the basis of educational certificate, the authority may consider the antecedents of the person who is facing criminal case or who has been convicted, but such aspects would be dependent upon the outcome of the criminal proceedings and it may also be required to be considered at the relevant point of time.

8. In view of the above, the order dated 11-6-2004 passed by the Gujarat State Examinations Board is quashed and set aside with the directions to the respondents to consider the matter in light of the observations made by this Court hereinabove and to render the decision as early as possible, but not later than the period of seven days from the date of receipt of the writ of this Court.

9. Petition is allowed to the aforesaid extent. Rule made absolute accordingly. Direct service is permitted latest by 21-7-2004.

20-7-2004 (Jayant Patel, J.)

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